

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

STATE OF ARIZONA, et al.

Plaintiffs,

v.

**NATIONAL
TELECOMMUNICATIONS AND
INFORMATION ADMINISTRATION,
et al.,**

Defendants.

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Civil Action No. 3:16-cv-00274

DECLARATION OF JOHN O. JEFFREY

1. My name is John O. Jeffrey. I am over the age of 21 and am competent to make this Declaration. I have personal knowledge of the facts stated herein and, if I appeared as a witness, I could and would testify to those facts.

2. I am General Counsel and Secretary of the Internet Corporation for Assigned Names and Numbers (ICANN), positions I have held since September 2003. I make this declaration to: (i) provide facts showing that several of the statements made in the Complaint for Declaratory and Injunctive Relief and Application for Temporary Restraining Order and Preliminary Injunction filed in this action on September 28, 2016 are incorrect; and (ii) provide a fuller context for other statements in that document.

Creation and Evolution of ICANN

3. ICANN is a California not-for-profit, public benefit corporation formed at the invitation of the United States Government in its June 1998 “Statement of Policy, Management of Internet Names and Addresses,” published at 63 Fed. Reg. 31741(1998) and available at http://www.ntia.doc.gov/files/ntia/publications/6_5_98dns.pdf (commonly known as the White

Paper; this refined an earlier proposal known as the Green Paper). In the White Paper, the U.S. Government declared its intention to transition the function of assigning technical Internet identifiers (including domain names, computer numeric addresses, and protocol parameters) from federally funded contractors to a private-sector-led organization broadly representing Internet stakeholders, including “Internet Protocol number registries, domain name registries, domain name registrars, the technical community, Internet service providers (ISPs), and Internet users (commercial, not-for-profit, and individuals) from around the world.” The White Paper expressed the hope that the transition would be complete before the year 2000, and stated that September 2000—about two years later—was an “outside” date for completion.

4. ICANN was incorporated on September 30, 1998 and in November 1998 was accepted by the U.S. Government as having an appropriate structure to begin the transition. The process of establishing an organization that represents, and is accountable to, the Internet’s diverse and globally dispersed stakeholders, all the while ensuring stable operation of the system of unique identifiers in a rapidly growing Internet, proved to be more challenging than anticipated. New representative structures had to be developed and tested, and often refined to improve their performance. The transition that was envisioned to last two years at the “outside” stretched into almost twenty years. I estimate that, since its inception, ICANN stakeholders and personnel have devoted well into tens of thousands of hours to developing and refining the organizational structures to meet these needs.

5. Although initially the U. S. Department of Commerce National Telecommunications and Information Administration (NTIA) monitored many aspects of ICANN’s operations, as time passed and confidence grew this monitoring diminished, so that the contractual relationship was reduced to a single contract, known as the Internet Assigned

Numbers Authority (IANA) functions contract, currently set to expire on September 30, 2016, subject to NTIA's right to extend it for up to a total of three years.

6. On March 14, 2014, NTIA announced its intent to complete the privatization process upon receiving a suitable transition proposal. "NTIA Announces Intent to Transition Key Internet Domain Name Functions," available at: <https://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions>. NTIA required the final transition proposal to have broad community support and meet these criteria:

- a. support and enhance the multistakeholder model;
- b. maintain the security, stability, and resiliency of the Internet DNS;
- c. meet the needs and expectations of the global customers and partners of the Internet Assigned Numbers Authority services; and
- d. maintain the openness of the Internet.

NTIA also specified that it would not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.

7. NTIA's announcement kicked off an intense collaborative process by ICANN's stakeholders, with over 800 hours of meetings/calls, many other hours of drafting and developing proposals for enhancement to ICANN's processes, accountability, and transparency, and over 32,000 mailing list exchanges. These resulted in a final transition plan, which was submitted to NTIA for consideration on March 10, 2016. NTIA, in consultation with other U.S. Government agencies, reviewed the plan and, on June 9, 2016, found that it meets the March 2014 criteria. ICANN and its stakeholders then worked on final preparation tasks for NTIA's review, and on August 16, 2016, NTIA informed ICANN that based on its review and barring any significant impediment, it intended to allow the IANA functions contract to expire as of October 1, 2016.

8. The discussion of the transition process has been exceptionally public since March 2014. Hundreds of news articles have reported on it and five Congressional hearings have been held covering the transition at least in part:

- April 2, 2014: “Ensuring the Security, Stability, Resilience, and Freedom of the Global Internet,” Subcommittee on Communications and Technology, House Energy and Commerce Committee.
- April 10, 2014: “Should the Department of Commerce Relinquish Direct Oversight Over ICANN?,” Subcommittee on Courts, Intellectual Property and the Internet, House Committee on the Judiciary
- February 25, 2015: “Preserving the Multistakeholder Model of Internet Governance,” Senate Committee on Commerce, Science and Transportation
- May 13, 2015: “Stakeholder Perspectives on ICANN: the .Sucks Domain and Essential Steps to Guarantee Trust and Accountability in the Internet’s Operation,” Subcommittee on Courts, Intellectual Property, and the Internet, House Judiciary Committee
- September 14, 2016: “Protecting Internet Freedom; Implications of Ending U.S. Oversight of the Internet,” Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts, Senate Committee on the Judiciary

Although bills have been introduced in Congress to block the transition (see S. 3034, 114th Cong., 2d Sess., introduced June 8, 2016), none of them have been passed.

The IANA Functions Contract and Root Zone Updates

9. The IANA functions contract is a no-cost procurement contract under which ICANN performs various protocol-assignment functions. The aspect of that contract highlighted by the complaint in this action involves maintenance of the “root zone file” used in the Internet’s domain name system (DNS).

10. The DNS correlates domain names with numeric computer addresses (such as 63.241.40.134). The DNS is hierarchical, consisting of top-level domains, such as .com, .org, and .gov, which consist of second-level domains, such as google.com, icann.org, and uscourts.gov, which in turn consist of lower-level domains, such as txs.uscourts.gov and

ultimately www.txs.uscourts.gov. The root zone file has a limited, but important, purpose: it designates which computers, operated by third parties known as “registry operators,” hold the data for the various top-level domains. It has correlation data only for this highest level.

11. The root zone file is disseminated by Verisign, Inc. (Verisign) to computers throughout the Internet known as “root nameservers,” which are operated by various entities including the U.S. Government, Verisign itself, and various other organizations. Because top-level domain registry operators frequently reconfigure the computers containing directories for their top-level domains, the root zone file is changed frequently. ICANN is responsible for receiving requests for updates by all the registry operators and determining whether each is appropriate under established procedures. Under the IANA functions contract, since 2000 ICANN has, after evaluating the requests, sent them to NTIA, which confirms that ICANN has followed agreed-to processes and procedures for updates. The updates are then sent to Verisign, which edits the master root zone file to reflect the updates.

12. By allowing the IANA functions contract to expire, NTIA will end the largely clerical role it plays in confirming that ICANN has followed the agreed update procedures. Since 2000, ICANN has submitted thousands of updates to the root zone file, and in every case NTIA has approved the update.

Effect of Transition on the .gov Top-Level Domain

13. A significant top-level domain is .gov, which was established in 1985 and since that time has been used for U.S. Government, and later state and local, Internet addresses. Since 1997, the General Services Administration (GSA) has served as the registry operator for the .gov top-level domain. In that role, GSA receives requests for second-level domain names within the .gov top-level domain and makes appropriate updates to the .gov zone file that it maintains. Data

about second-level domains within .gov top-level domain is then loaded into .gov nameservers operated under contract for the GSA. (The .gov nameservers are different than the root nameservers.)

14. ICANN has no involvement in the updating of the .gov zone file or the operation of the .gov nameservers. GSA, not ICANN, receives requests for changes to second-level domains within .gov and makes and disseminates the appropriate .gov zone-file changes. That function is outside the scope of the IANA functions contract and thus, NTIA has never been responsible for checking that those changes are properly performed.

15. In her declaration submitted as Exhibit F to the complaint, Leslie Welch (Director of Operations for the Arizona Attorney General's Office) describes her agency's registration of the azag.gov second-level domain name. As noted in paragraph 3 of her declaration, her agency registered this second-level domain through GSA, the operator of the .gov domain registry. Because the IANA functions contract does not cover handling of such registration requests, ICANN does not currently handle requests for changes to the azag.gov domain, and will not handle them after the transition.

16. In connection with the transition, NTIA and ICANN discussed the need for restrictions on ICANN's ability to change the delegations of the .gov top-level domain, as well as the .us, .edu, and .mil top-level domains, in the root zone file. On June 3 and 6, 2016, NTIA and ICANN exchanged letters stating that, if the transition is completed, ICANN will not change the delegations of these top-level domains (such as by changing the root zone file) without NTIA's prior written consent. These are attached as Exhibits 1 and 2. ICANN understands this exchange to create a contractually binding commitment to obtain NTIA's prior written consent before any future re-delegation of these top-level domains.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was made this 30th day of September, 2016.

A handwritten signature in black ink, appearing to read "JOE", with a large, stylized initial "J" and "O".

John O. Jeffrey

Exhibit 1 to Declaration of John O. Jeffrey



UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Communications
and Information
Washington, D.C. 20230

JUN 3 2016

Göran Marby
President and CEO, ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Re: U.S. Government Administered Top Level Domains

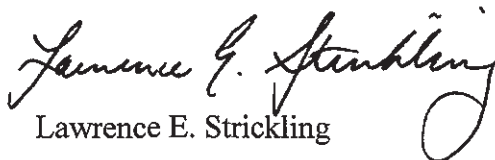
Dear Mr. Marby:

This letter is in regard to the work done by the Internet Corporation for Assigned Names and Numbers (ICANN) in performing the Internet Assigned Numbers Authority (IANA) functions. One of those IANA functions includes receiving and processing top level domain (TLD) change requests. This letter recognizes the role performed by ICANN and seeks written confirmation that ICANN is required to notify the National Telecommunications and Information Administration (NTIA) if it receives any re-delegation requests associated with the U.S. Government administered .mil, .gov, .edu, and .us TLDs. Further, the U.S. Government seeks confirmation that ICANN will not take any action to re-delegate these U.S. Government administered domains without first obtaining express written approval from NTIA. Fiona Alexander, Associate Administrator for NTIA's Office of International Affairs, is NTIA's point of contact on these matters, reachable at falexander@ntia.doc.gov or 202-482-1866.

The IANA functions stewardship transition proposal calls for the ability of stakeholders to initiate a Separation Cross-Community Working Group that could lead to a recommendation that ICANN separate the naming-related IANA function operations. If and when the IANA stewardship transition occurs, the U.S. Government requests confirmation that ICANN will notify NTIA in writing if such a working group is created. It is critical to the stable and secure operation of the U.S. Government Administered top level domains that any potential successor operator commit in writing that it will honor and maintain ICANN's commitments with respect to these U.S. Government-administered TLDs. Please acknowledge this request and confirm ICANN's commitment to the foregoing with a written response to this letter.

Thank you for your prompt attention to this matter.

Sincerely,


Lawrence E. Strickling

cc: Dr. Stephen Crocker, Chairman of the Board, ICANN
Elise Gerich, VP, IANA and Technical Operations, ICANN

Exhibit 2 to Declaration of John O. Jeffrey



The Internet Corporation for Assigned Names and Numbers

6 June 2016

The Honorable Lawrence E. Strickling
Assistant Secretary for Communication and Information and Administrator,
National Telecommunications and Information Administration
United States Department of Commerce
1401 Constitution Avenue, N.W.
Washington, DC 20230

Re: U.S. Government Administered Top Level Domains

Dear Asst. Secretary Strickling:

Thank you for your recognition of ICANN's role in performance of the Internet Assigned Numbers Authority (IANA) functions, including receiving and processing top level domain (TLD) change requests. ICANN confirms ICANN's obligation to notify the National Telecommunications and Information Administration (NTIA) of any re-delegation requests associated with the U.S. Government administered .mil, .gov, .edu, and .us TLDs. Further, ICANN confirms that it or its contractor will not take any action to re-delegate these U.S. Government administered domains without first obtaining express written approval from NTIA. ICANN will communicate with NTIA's point of contact on these matters, Fiona Alexander, Associate Administrator for NTIA's Office of International Affairs.

If and when the IANA Stewardship Transition occurs, and if post-Transition a Separation Cross Community Working Group is initiated, ICANN will notify the U.S. Government, with the understanding that the initiation of such a working group may or may not result in a recommendation that ICANN separates its IANA naming-function operations. ICANN understands that it is critical to the stable and secure operation of these domains that ICANN ensure that any potential successor commit in writing that it will honor and maintain ICANN's commitments with respect to these U.S. Government-administered TLDs.



These actions will form part of ICANN's obligations for an orderly transition to a successor IANA Functions Operator, and include communication of other similar commitments ICANN maintains as it relates to limitations on redelegation of other TLDs.

Sincerely,

A handwritten signature in blue ink, appearing to be "Göran Marby", written over a horizontal line.

Göran Marby
President & CEO ICANN

cc: Dr. Stephen Crocker, Chairman of the Board, ICANN
Elise Gerich, VP, IANA & Technical Operations, ICANN